

WATER PERMIT NO. 2531-2

Name of Applicant: **Pete Lien & Sons, Inc.**

Address: **PO Box 440, Rapid City SD 57709**

Phone: **605 342-7224**

Amount of Water Claimed: **5 cfs**

Total Acres: **NA**

Source of Water Supply: **Cheyenne River**

Water to be used for: **industrial**

County: **Fall River**

Type of Waste Disposal System:

Location: **10 miles east of Hot Springs**

PRIORITY

Date Received: **6-14-04**

Application/License Fee: **\$975**

Corrected Application Received: **6-21-04**

Period of Annual Use: **March 1 – November 30**

Remarks: **gravel washing plant**

Diversion Point: **W ½ NW ¼ Sec 26-T7S-R7E**

Land to be Irrigated:

Depth of Well: **NA**

Well Driller:

Remarks:

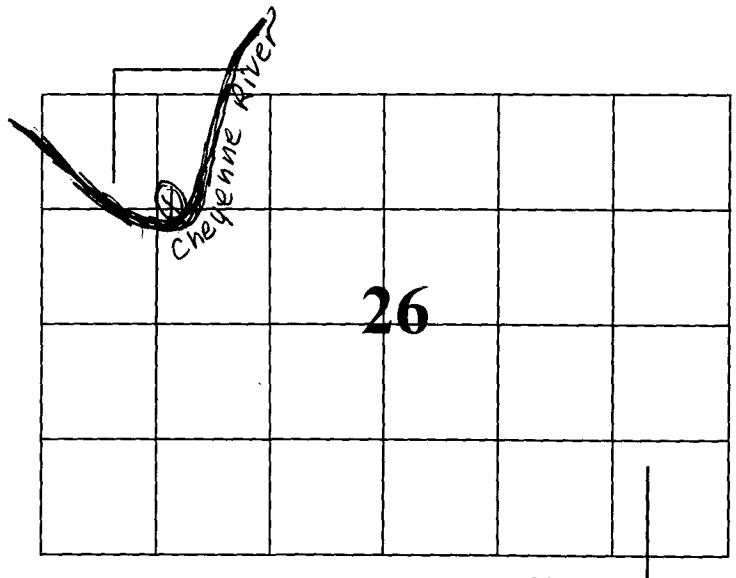
Type of Map: **topo**

Prepared by: **Kim C Sarver, PE**

Reviewed and the Number Assigned on: **6-21-04**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



RECEIVED

JUN 14 2004

WATER RIGHTS
PROGRAM

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>2531-2</u>	(office use only) Hydrologic Unit <u>10120109</u>
	Basin <u>Upper Cheyenne</u>	
	Newspaper <u>Hot Springs Star, Hot Springs</u>	

Application For Permit To Appropriate Water Within The State Of South Dakota

Check use(s) of water:

- | | | | |
|---|--|--|--|
| ☐ Municipal | ☐ Suburban Housing | ☐ Recreational | ☐ Institutional |
| ☐ Rural Water System | ☐ Commercial | ☐ Fish & Wildlife | ☐ Geothermal Heat |
| ☐ Domestic (over 18 gpm) | ☒ Industrial | ☐ Other | |

Type of Application: ☒ New ☐ Vested Right (Use predates Mar 2, 1955) ☐ Future Use Reservation
(check one) ☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☐ Amendment/Correction to Permit No. _____

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)

- Name of Applicant Pete Lien & Sons Inc Phone 605-342-7224
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address PO Box 440 Rapid City State SD 57709
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 5.0 *CFS or ----- **GPM ----- ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply Cheyenne River
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) County Fall River
NW 1/4 Sec 26 T7S R7E Fall River County (W 1/2 NW 1/4)
- County or counties where water will be used Fall River
- Annual period during which water is to be used Spring/Summer/Fall March 1 - Nov 30
- Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)
This application is to draw water from the Cheyenne River for the operation of a gravel washing plant.

STATE OF SOUTH DAKOTA)

County of Pennington SS

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Attach map and any other technical information. (see instructions)

I, Kyle Frisinger, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Applicant's signature [Signature]

Subscribed and sworn to before me this 8th day of June 2004

Notary Public signature

[Signature]
Commission Expires: 02/25/2007

SOUTH DAKOTA
WATER PERMIT NO. 2531-2

Date of first receipt of application June 14, 2004.

Date of return to applicant for corrections, amendments or changes June 14, 2004.

Date of receipt of corrected application June 21, 2004.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 2531-2 to Pete Lien & Sons Inc., PO Box 440, Rapid City SD 57709 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2531-2 appropriates 5.0 cubic feet of water per second from the Cheyenne River located in the W ½ NW ¼ Section 26-T7S-R7E.
2. The water appropriated shall be used for the purpose of industrial use in a gravel washing plant and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: March 1 – November 30.
4. The date of approval of Permit No. 2531-2 is March 2, 2005.
5. The date from which applicant may claim right is June 14, 2004.
6. One-fifth of the construction is to be completed on or before September 2, 2007.
7. All construction is to be completed on or before March 2, 2010.
8. Water is to be put to beneficial use on or before March 2, 2014.
9. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed. This permit does not authorize diversion of water from the Cheyenne River at any time when the river flow is low, unless written orders have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.
2. Permit No. 2531-2 authorizes diversion of water from the Cheyenne River only to the extent necessary to replenish the holding/settling ponds for losses due to evaporation and dust control purposes. Water shall be re-circulated through the holding/settling ponds and reused to minimize the need to make Cheyenne River diversions.

WATER MANAGEMENT BOARD

By: Garland Erbele

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

MAY 02 2005

date



(type or print in ink)

1. Well Information - Proposed Construction

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth to Water (ground surface to water level) _____
- g) Distance to nearest existing domestic well:
- On applicants property _____ On property owned by others _____

2. Wastewater Disposal System Information

- a) Type of System (i.e. septic tank, drain field) _____
- b) System Capacity (gallons) _____ Year Constructed _____
- c) Connected to the City of _____ Sanitary System _____

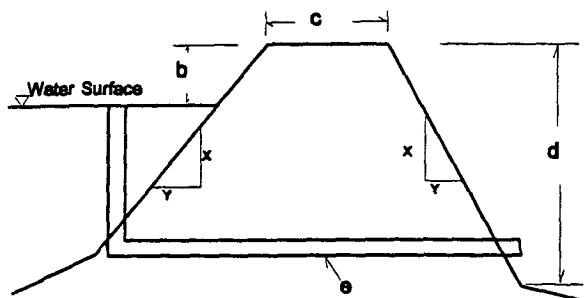
3. Dugout Information

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

4. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:



- b) Freeboard _____
- c) Crest Width _____
Crest Length _____
- d) Height _____
- e) Primary Outlet Capacity _____
If pipe, diameter _____
- f) Secondary Spillway Capacity _____
Spillway Width _____
- g) X & Y Slope _____
Upstream _____
Downstream _____
- h) Surface Area of Impoundment _____
- i) Storage _____ Acre Feet
- j) Drainage Area Above Dam _____ Acres

Application for Water Permit
Pete Lien & Sons Inc.

Fee Schedule

5.0 CFS = 2,244 gallons/minute

First 120 acre feet (75 gallons/minute)	\$ 150.00	\$ 150.00
Second 120 acre feet (75 gallons/minute)	\$ 75.00	\$ 75.00
Fee for final inspection/licensing	\$ 50.00	\$ 50.00
Each 120 acre feet (75 gallons/minute)	\$ 25.00	\$ 698.00

		\$ 973.00

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date June 21, 20 04

RECEIVED OF Birdsall Sand & Gravel, PO Box 767, Rapid City SD 57709-0767

The following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>2531-2</u> to Appropriate Water, to construct and to put water to beneficial use	2.00	
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	2.00

No.

001800

By

Darlene White

Chief Engineer

gm

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date June 14, 20 04

RECEIVED OF Birdsell Sand & Gravel, PO Box 767, Rapid City SD 57709-0767

The following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>2531-2</u> to Appropriate Water, to construct and to put water to beneficial use	923	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>2531-2</u>	50	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	973.00

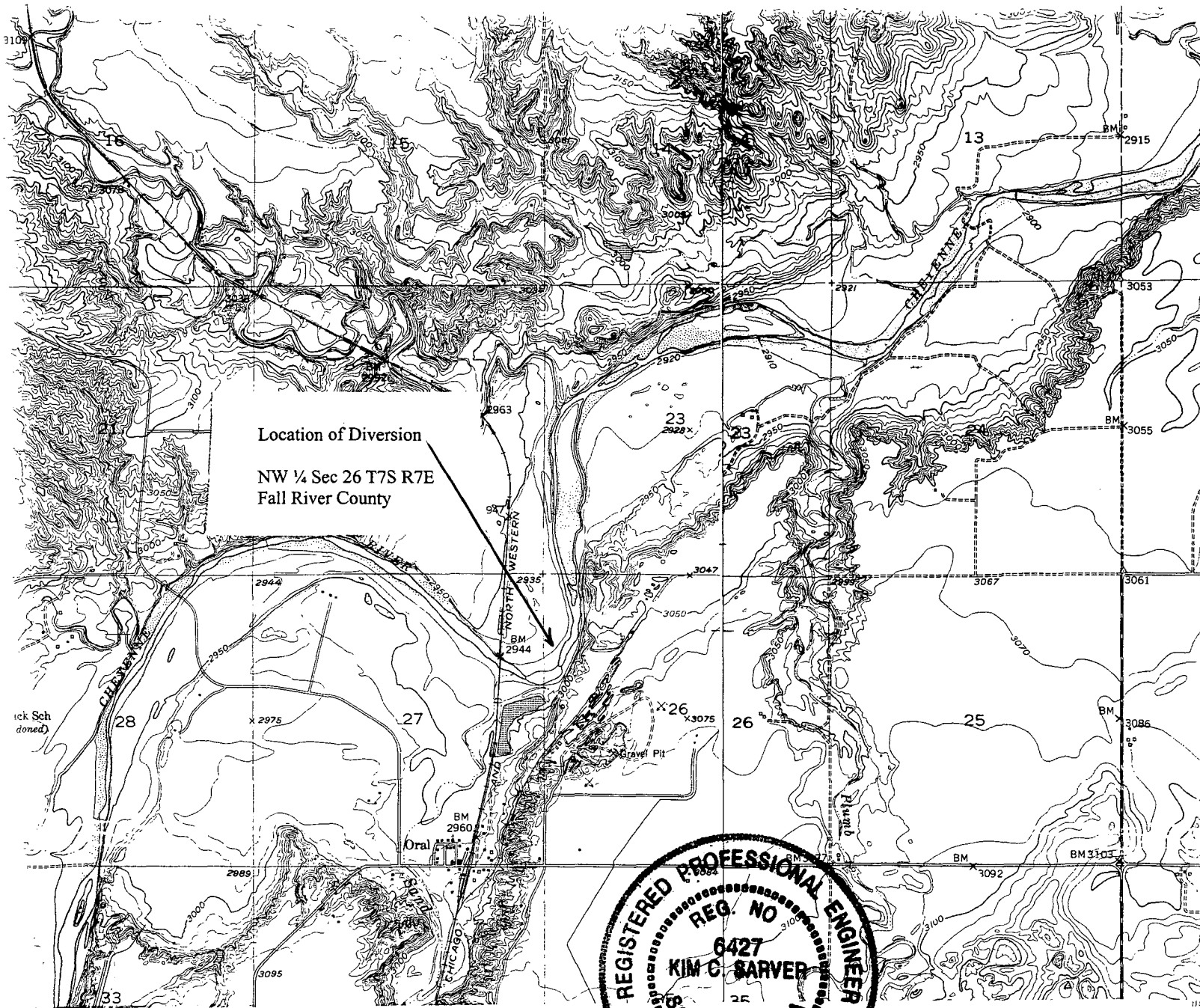
No. 001-16

By

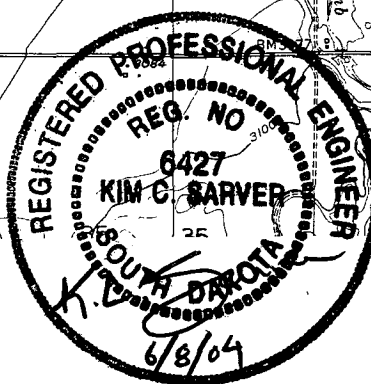
Darlene S. Erbe

Chief Engineer

gm



Location of Diversion
NW 1/4 Sec 26 T7S R7E
Fall River County

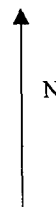


**PETE
LIEN**
& Sons, Inc.

Pete Lien & Sons, Inc.
P.O. Box 440
Rapid City, SD 57709
605-342-7224

South Dakota Water Rights Program
Joe Foss Building
523 East Capital Ave
Pierre, SD 57501

APPLICATION FOR PERMIT TO APPROPRIATE WATER
6/08/04



2531-2

PETE

LIEN

MAILING ADDRESS: P.O. BOX 440 RAPID CITY, SD 57709-0440 PH. 605-342-7224
PHYSICAL ADDRESS: 3401 UNIVERSAL DR. RAPID CITY, SD 57702 FX. 605-342-6979

•PETE LIEN & SONS •BIRDSALL SAND & GRAVEL •COLORADO LIEN CO.
•DAKOTA BLOCK CO. •DAKOTA STEEL & SUPPLY •TRANS COLORADO CONCRETE

PETER C. LIEN
1898 - 1969 FOUNDER

BRUCE H. LIEN
FOUNDER

CHARLES H. LIEN
FOUNDER
CHAIRMAN

PETER C. LIEN
PRESIDENT

& Sons, Inc.
June 8, 2004

Water Rights Program
Joe Foss Building
523 East Capital Ave
Pierre, SD 57501-3181

RE: Application for Water Permit

To Whom It May Concern:

Attached is the Application for Permit to Appropriate Water within the State of South Dakota. This location is approximately ½ mile north of Oral SD in Fall River County. The water we would like to use would be from the Cheyenne River.

If you have any questions or concerns, please feel free to contact me at the Rapid City office or my direct line phone at 605-939-2753. Thank you.

Sincerely,

PETE LIEN & SONS INC.



Kyle Frisinger
Sand & Gravel Manager

Cc: Scott Langduth, Pete Lien & Sons, Inc.
Joel Brannan, Pete Lien & Sons, Inc
File

RECEIVED

JUN 14 2004

**WATER RIGHTS
PROGRAM**



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 14, 2004

Pete Lien & Sons, Inc.
Kyle Frisinger, Sand & Gravel Manager
PO Box 440
Rapid City SD 57709

RECEIVED

JUN 21 2004

WATER RIGHTS
PROGRAM

Dear Mr. Frisinger:

Thank you for submitting the *Application for a Permit to Appropriate Water* for a gravel washing plant in Fall River County. As stated in your phone conversation with Ron Duvall, an additional \$2 is required to complete the application.

Upon receipt of the fee, further processing of the application will continue. If you have any questions, please contact me.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

August 11, 2004

Curt Anderson
Bureau of Reclamation
515 9th Street, Room 101
Rapid City SD 57701

Dear Curt:

Pete Lien & Sons has applied for a water permit to divert from the Cheyenne River for industrial use in a gravel washing plant. Enclosed is a copy of the report, recommendation and public notice prepared on the application.

The notice of hearing is to be published August 17 and 24, 2004 in the Hot Springs Star scheduling a hearing before the Water Management Board on October 6, 2004 in Pierre. If GF&P desires to participate in the hearing, a petition to intervene must be submitted by September 24, 2004.

This information is being sent because of Bureau's interest in keeping apprised of water issues along the Cheyenne River. If you have any questions, please feel free to contact Mark Rath or myself.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

August 11, 2004

Leslie Petersen
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

Dear Leslie:

Pete Lien & Sons has applied for a water permit to divert from the Cheyenne River for industrial use in a gravel washing plant. Enclosed is a copy of the report, recommendation and public notice prepared on the application.

The notice of hearing is to be published August 17 and 24, 2004 in the Hot Springs Star scheduling a hearing before the Water Management Board on October 6, 2004 in Pierre. If GF&P desires to participate in the hearing, a petition to intervene must be submitted by September 24, 2004.

This information is being sent because of GF&P's interest in surface water diversion from stream. If you have any questions, please feel free to contact Mark Rath or myself.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
(605) 773-3352

enclosures

REPORT ON WATER PERMIT APPLICATION 2531-2

Pete Lien & Sons, Inc.

PO Box 440

Rapid City, SD 57709

(605)342-7224

Water Permit Application No. 2531-2, Pete Lien & Sons, Inc., proposes to appropriate 5.0 cubic feet per second (cfs) of water from the Cheyenne River approximately three-quarters ($\frac{3}{4}$) of a mile north-northeast of Oral in Fall River County, SD for a gravel washing operation. (Attachment 1) The annual period of use requested is from March 1 to November 30. The gravel washing water will be re-circulated through holding/settling ponds and replenished as needed to replace losses due to evaporation and dust control use.

Review of Water Source

The water source for the proposed project is the Cheyenne River in the W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 26 T7S R7E, approximately 20 river miles downstream of the Angostura Dam in Fall River County, SD. Rising in the high plains of Wyoming in the Thunder Basin National Grasslands, the Cheyenne River meanders around the southern end of the Black Hills entering South Dakota about 14 miles northwest of the town of Edgemont, SD. The river then passes through narrows south of Hot Springs, SD, the location of Angostura Dam. Construction of Angostura Dam, part of the Angostura Unit irrigation system, was completed in 1949. The Bureau of Reclamation (BOR) holds South Dakota Water Right No. US579-2 for an annual one-time fill of 138,761 acre-feet of water stored in Angostura Reservoir for irrigation of 12,218 acres, and for fish, wildlife, recreation, and other purposes. Since October 1949 the flow in the Cheyenne River downstream of Angostura Dam has been regulated primarily to serve the irrigation needs of the Angostura Irrigation District. Water is diverted directly from Angostura Reservoir and delivered through a main canal to the Irrigation District. Average releases to Irrigation District lands are about 40,000 acre-feet per year providing an average onsite delivery of 2.5 acre-feet/acre.

Perennial Cheyenne River flows, above and below Angostura Reservoir, are normally low with occasional high flows occurring during spring snowmelt and periodic rainstorms. Average precipitation in the area is about 16-inches per year, most of which occurs from April through September.

Seepage past the dam, flows from tributaries, and return water flows from the Irrigation District distribution system presently fulfill downstream State water rights and domestic use.

During the normal irrigation season, stream flow below Angostura Dam to the Fall and Cheyenne Rivers' confluence is quite low. In the summer of 2002 the BOR, operator of the Angostura Unit, completed repairs and upgrades on Angostura Dam. These repairs lowered leakage from the radial gates, but BOR doesn't believe the overall rate of leakage from the dam was significantly lessened. Before repairs and upgrades, leakage from the dam was about 3.3-cubic feet per second (cfs) and the total return water flows to the Cheyenne River from the Irrigation District were estimated to be 54-percent of the amount released to the main canal or about 30-cfs downstream of the dam to east of Buffalo Gap, SD.

Fed by thermal springs and wells, Fall River's base stream flow normally does not vary far from the median rate throughout the year (Table 1). The steady flow from Fall River, return water flows from the Irrigation District, and flow from other tributaries fulfill State water rights and domestic use downstream of the Fall-Cheyenne Rivers' confluence.

Table 1. Fall River Median Flow Percentiles (cfs)

Percentile	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
10	20	20	20	19	20	20	21	21	21	21	21	21
25	22	22	22	21	21	22	22	22	22	22	22	22
50	23	24	24	22	22	24	24	24	24	23	24	24
75	26	26	26	26	26	26	26	26	26	26	26	26
90	29	29	30	29	29	29	29	29	29	30	29	29

An Environmental Impact Statement (EIS), in compliance with the National Environmental Policy Act, was prepared in 2002 by BOR in conjunction with renewal of the Angostura Irrigation District contract. This EIS analyzed the impacts of four (4) water management alternatives; 1) No Action, 2) Re-establishment of Natural Flows below Angostura Dam, 3) Improved Efficiencies in the Irrigation District's System, and 4) Reservoir Recreation and Fisheries. Improved Efficiencies was selected as the preferred alternative for the management of Angostura Dam and the Irrigation District.

The Improved Efficiencies Alternative within the Irrigation District includes measures such as lining canals and laterals, putting laterals into pipes, improving water measuring devices, leveling fields, irrigating by gated pipe or sprinkler, etc., with estimated water saving increases of 5-percent for the delivery system and 10-percent for on-farm efficiency. Saved water could be used for recreation, fisheries, downstream flows, or other purposes. Although return flows from the Irrigation District will lessen, a 10-percent on-farm efficiency improvement would not be expected to significantly change the Cheyenne River's flow rates during the normal irrigation season.

Consultations between BOR, the State of South Dakota, and the Irrigation District on implementation of the Improved Efficiencies Alternative and other measures pertinent to water management practices within Angostura Unit are presently in progress.

From 1968 to 1980 USGS maintained a stream flow gaging station east of Buffalo Gap, SD immediately downstream of the northern boundary of this proposed project. The limited historical data from this gage for the June through August interval, when Cheyenne River flows are mainly regulated by output to the Irrigation District from Angostura Dam, indicate there is a 50-percent probability the median flow rate at the proposed project site will range from 45 to 58-cfs or greater during this interval of any given year. There is a 75-percent probability the median flow rate will range from 34 to 47-cfs or greater for the same interval at this location. (Table 2)

Table 2. Buffalo Gap Monthly Median Flow (cfs)

Percentile	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
10	41	57	55	46	43	36	39	39	56	62	60	41
25	48	60	60	52	49	41	34	47	62	64	65	54
50	58	65	66	60	59	52	45	58	66	70	71	64
75	66	72	89	90	74	84	58	67	78	74	74	71
90	70	91	158	154	235	159	82	80	88	81	80	76

Since 1998 USGS has maintained a stream flow gaging station at Red Shirt, SD downstream of this proposed project and 12 river miles downstream of the last Irrigation District wasteway at the mouth of Cottonwood Creek. Data through 2002 from this gaging station are high flow rate biased since these years experienced above normal precipitation in the Upper Cheyenne River Basin. Limited data from this gaging station for the June through August interval, when Cheyenne River flows are mainly regulated by output to the Irrigation District from Angostura Dam, indicate there is a 50-percent probability the median flow rate will range from 78 to 97-cfs or greater downstream of the proposed project during this interval of any given year. There is a 75-percent probability the median flow rate will range from 69 to 91-cfs or greater for the same interval at this location. (Table 3)

Table 3. Red Shirt Monthly Median Flow (cfs)

Percentile	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
10	67	61	112	112	120	87	63	64	81	98	86	66
25	70	65	141	123	190	91	69	72	85	104	98	80
50	71	72	198	151	309	97	78	87	89	115	113	104
75	99	98	214	466	363	441	139	114	113	150	506	99
90	111	113	233	670	390	627	165	129	123	171	736	140

USGS Wasta, SD stream flow gaging station data from 1950 through 2002 indicate there is a 50-percent probability the median flow rate in the Cheyenne River at this location will range from 104 to 272-cfs or greater during the June through August interval of any given year. There is a 75-percent probability the median flow rate will range from 66 to 93-cfs or greater for the same interval at this location. (Table 4)

Table 4. Wasta Monthly Median Flow (cfs)

Percentile	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
10	30	50	102	78	60	53	47	47	51	62	70	45
25	48	78	146	117	95	93	72	66	73	84	93	73
50	80	110	240	214	237	272	142	104	100	112	119	100
75	135	179	471	383	623	925	353	176	152	168	160	130
90	220	349	867	839	1560	2130	725	425	282	279	292	230

The presumption can be made that the stream flow rates recorded at the cited gaging stations are post withdrawal of the majority of those Water Right allocations upstream of the gage's location during the normal irrigation season.

Review of Existing Water Rights

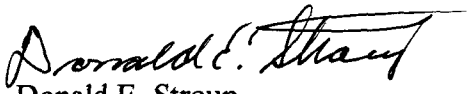
Downstream of this proposed project's location to Red Shirt, SD there are fourteen (14) Water Rights with diversions totaling 36.39-cfs. From Red Shirt to Wasta, SD there are eight (8) Water Rights with diversions totaling 22.35-cfs.

In 1989 and 1990 shutoff orders for junior water rights were issued for the Angostura Dam to Wasta, SD reach of the Cheyenne River due to severe drought conditions.

Except during severe drought conditions in the Upper Cheyenne River Basin, historical USGS stream flow data indicate this project's proposed allocation of 5.0-cfs of water should not adversely impact any of the present water rights or domestic water use along this reach of the Cheyenne River.

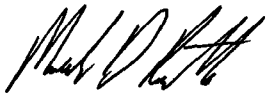
Conclusions

1. Water Permit Application No. 2531-2, Pete Lien & Sons, Inc., proposes to appropriate 5.0 cubic feet per second (cfs) of water from the Cheyenne River north-northeast of Oral in Fall River County, SD for a gravel washing operation. The water will be re-circulated through holding/settling ponds and replenished as needed to replace losses due to evaporation and dust control use
2. Except for severe drought conditions in the Upper Cheyenne River Basin, historical USGS stream flow data indicate there is non-appropriated water available and this project should not adversely impact any of the present Water Rights or domestic water use along the reach of the Cheyenne River from the project's location to Wasta, SD.
3. Implementation of the BOR's Improved Efficiency Alternative with a 10-percent on-farm improvement should not significantly change the Cheyenne River's flow rates from Angostura Dam to Wasta, SD during the normal irrigation season.
4. Under extremely dry climatic conditions, the availability of water for downstream domestic use and senior water rights may be limited. During such conditions the applicant may be required by the Chief Engineer to limit or stop diversions from the Cheyenne River in order to protect these uses.



Donald E. Stroup
Natural Resources Project Engineer
DENR Water Rights Program

Reviewed by:



Mark D. Rath
Natural Resources Engineering Specialist
DENR Water Rights Program

References:

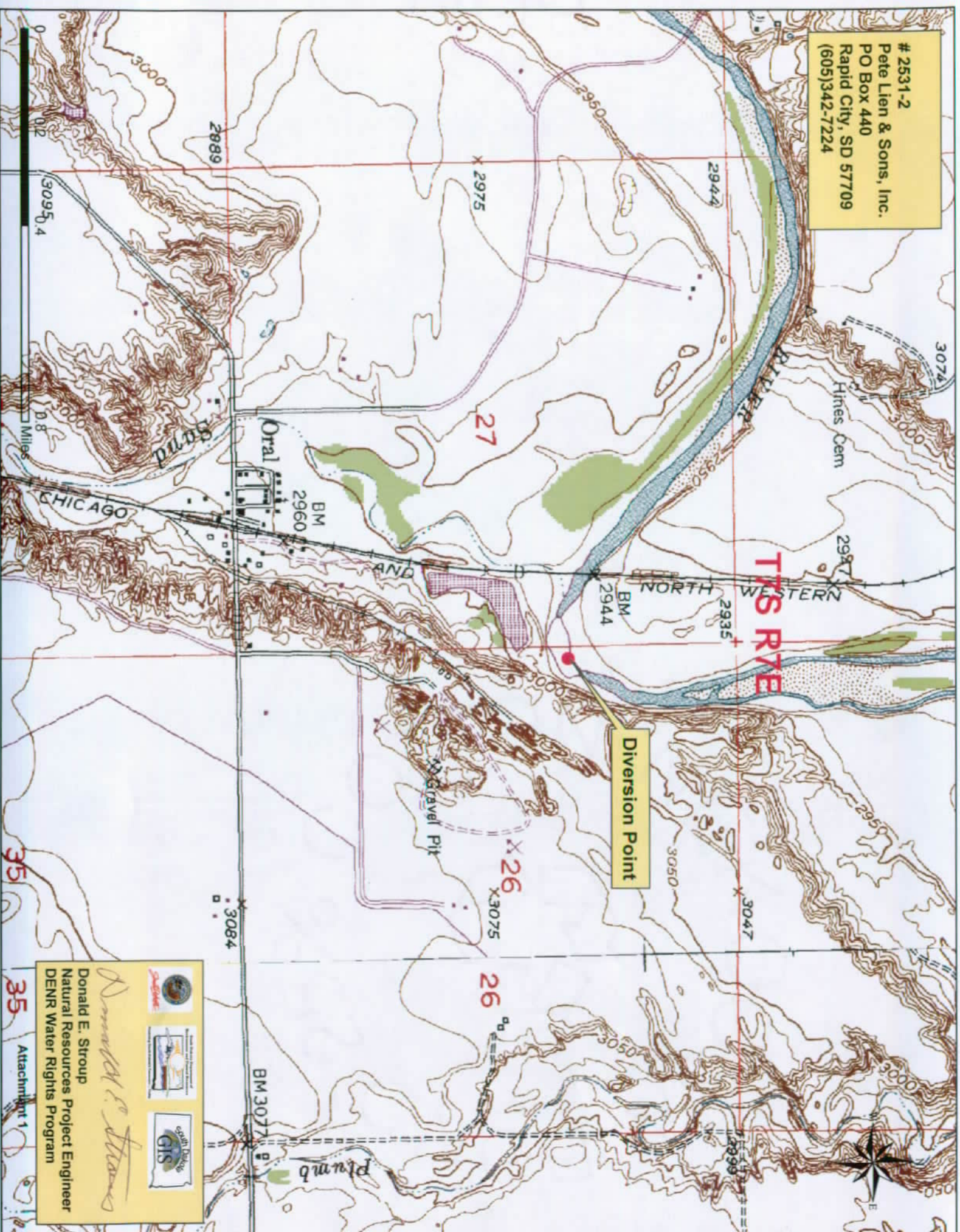
South Dakota Department of Environment and Natural Resources, Water Rights Program Records

Bureau of Reclamation, Angostura Unit Contract Negotiation, and Water Management Draft Environmental Impact Statement

U.S. Geological Survey, NWISWeb National Water Information System, Historical Stream Flow Data for South Dakota

Communications with Bureau of Reclamation Personnel, Angostura Unit

2531-2
Pete Lien & Sons, Inc.
PO Box 440
Rapid City, SD 57709
(605)342-7224



Donald E. Stroup
Natural Resources Project Engineer
DENR Water Rights Program

Donald C. Davis





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2531-2, Pete Lien & Sons, Inc.**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2531-2, Pete Lien & Sons, Inc., c/o Kyle Frisinger, PO Box 440, Rapid City SD 57709.

The Chief Engineer is recommending APPROVAL of Application No. 2531-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualification:

1. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed. This permit does not authorize diversion of water from the Cheyenne River at any time when the river flow is low, unless written order have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.
2. Permit No. 2531-2 authorizes diversion of water from the Cheyenne River only to the extent necessary to replenish the holding/settling ponds for losses due to evaporation and dust control purposes. Water shall be re-circulated through the holding/settling ponds and reused to minimize the need to make Cheyenne River diversions.

See report on application for additional information.

Garland Erbele, Chief Engineer
August 10, 2004

NOTE: This water permit, if approved, will be a junior water right subject to shut-off orders. Dry conditions can result in low flows in the Cheyenne River that will require Pete Lien & Sons to cease pumping. It is in Pete Lien's interest to fill the ponds in the spring when high flows generally occur in order to have water to recirculate from the ponds in the event that a Cheyenne River shut-off order are issued.

NOTICE OF HEARING

on Application No. 2531-2
to Appropriate Water

Notice is given that Pete Lien & Sons, Inc., PO Box 440, Rapid City SD 57709 has filed an application for a water permit to appropriate 5.0 cubic feet of water per second from the Cheyenne River located in the W NW Section 26-T7S-R7E. The water is for industrial use in a gravel washing plant.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2531-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by September 24, 2004. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 10:00 A.M. October 6, 2004 in the Mathews Training Center, Foss Building, 523 E Capitol, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The October 6, 2004 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by September 24, 2004.

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other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by September 24, 2004, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

Since this application does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case may not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by September 24, 2004.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Aug. 17, 24

AFFIDAVIT OF PUBLICATION

State of South Dakota)
) ss.
County of Fall River)

Brett Nachtigall of Hot Springs, Fall River County, South Dakota, being duly sworn, upon oath says that he is the publisher of the Hot Springs Star, is a legal newspaper, as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive, and is published at Hot Springs, county and state aforesaid; that the advertisement headed —

47- Notice of
Hearing

a true printed copy thereof is hereunto annexed, was published in the said Hot Springs Star, in the regular and entire issue of said paper,

for two

successive issues, beginning with the issue dated _____

August 17, 2004

and ending with the issue dated _____

August 24, 2004

That the full amount of the fee charged for the publication of said notice is \$ 60.82, and that

no agreement or understanding, for the division thereof, has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever, that the whole amount insures to the benefit of the publishers of said newspaper.

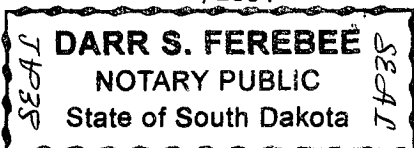
Brett Nachtigall
Subscribed and sworn to before me

this 30 day of August
20 04.

D. S. F.

Notary Public

My Commission Expires
November 24, 2004



RECEIVED

SEP - 1 2004

**WATER RIGHTS
PROGRAM**

Instruction to Newspaper - Publish first Notice on August 17, 2004 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 2531-2 to Appropriate Water

Notice is given that Pete Lien & Sons, Inc., PO Box 440, Rapid City SD 57709 has filed an application for a water permit to appropriate 5.0 cubic feet of water per second from the Cheyenne River located in the W ½ NW ¼ Section 26-T7S-R7E. The water is for industrial use in a gravel washing plant.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2531-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by September 24, 2004. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

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Since this application does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case may not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by September 24, 2004.

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DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

August 11, 2004

Hot Springs Star
PO Box 1000
Hot Springs SD 57747-1000

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 2531-2 to Appropriate Water to be published twice. Please publish the first notice on August 17, 2004 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

The applicant must verify to you that the notice is to be published, before you make the first publication. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Pete Lien & Sons Inc., % Kyle Frisinger, PO Box 440, Rapid City SD (Ph # 605-342-7224).

Please send the Water Rights Program the first publication immediately. The publication is checked for accuracy so any corrections can be made in the second publication. You may use the form below or fax a copy of the first publication. Any fax should be sent to the attention of Karen Schlaak at (605) 773-4068. Publication errors can invalidate the public notice.

After the second publication, **please send us an affidavit or use the enclosed Proof of Publication form.** The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

No. 2531-2

TO: Eric Gronlund
Water Rights Program
Joe Foss Building
Pierre SD 57501-3181

Date _____

We are in receipt of your letter of August 11, 2004 enclosing Notice to Appropriate Water by Application No. 2531-2 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

**NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT
THE NEWSPAPER RIGHT AWAY.**

August 11, 2004

Pete Lien & Sons Inc.
%Kyle Frisinger
PO Box 440
Rapid City SD 57709

Dear Mr. Frisinger:

Water Permit Application No. 2531-2 for industrial use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Publisher of the Hot Springs Star printed at Hot Springs, SD (Ph # 605-745-4170). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice and to arrange for payment. Early contact with the paper can eliminate delays. Upon receiving authorization, the publisher has been instructed to publish your notice once each week for two consecutive weeks. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,


Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

September 1, 2004

Pete Lien & Sons Inc.
%Kyle Frisinger
PO Box 440
Rapid City SD 57709

Dear Mr. Frisinger:

The legal Notice of Hearing for Water Permit Application No. 2531-2 published in the Hot Springs Star was not correct. The location of the area where water is to be diverted from the Cheyenne River was incorrectly published as W NW Section 26-T7S-R7E. The correct location is W ½ NW ¼ Section 26-T7S-R7E.

As a result of the error, the Notice of Hearing needs to be readvertised in the Hot Springs Star on September 7 and 14, 2004. The readvertisement is needed to ensure the permit is free from legal problems due to inaccurate public notice. The information needed to readvertise the notice is enclosed.

If you have any questions, please contact Karen Schlaak or me.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

c: Hot Springs Star



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

September 1, 2004

Hot Springs Star
PO Box 1000
Hot Springs SD 57747-1000

ATTENTION: Legal Public Notice

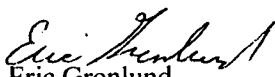
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This notice was originally published August 17 and 24th. It is being readvertised in order to correct errors that occurred in those publications (see attached letter).

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Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

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TO: Eric Gronlund
Water Rights Program
Joe Foss Building
Pierre SD 57501-3181

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Newspaper

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RECEIVED

SEP 17 2004

WATER RIGHTS
PROGRAM

AFFIDAVIT OF PUBLICATION

State of South Dakota)
) ss.
County of Fall River)

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63- Notice of
Hearing

a true printed copy thereof is hereunto annexed, was published in the said Hot Springs Star, in the regular and entire issue of said paper,

for two

successive issues, beginning with the issue dated _____

September 7, 20 04

and ending with the issue dated _____

September 14, 20 04

That the full amount of the fee charged for the publication of said notice is

\$ 34.50, and that

no agreement or understanding, for the division thereof, has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever, that the whole amount insures to the benefit of the publishers of said newspaper.

Brett Nachtigall
Subscribed and sworn to before me

this 14 day of Sept

2004
Shawn M. Tuttsch

Notary Public

My Commission Expires
January 23, 2008

63

NOTICE OF HEARING
on Application No. 2531-2 to
Appropriate Water

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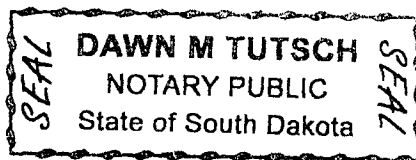
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Sept. 7, 14.



FARRELL, FARRELL & GINSBACH, P.C.

LAWYERS

441 NORTH RIVER STREET
HOT SPRINGS, SOUTH DAKOTA 57747
PHONE: 605.745.5161
FAX: 605.745.3154
EMAIL: farrellginsbach@gwtc.net

MARTIN P. FARRELL (1940-1995)

JANE M. FARRELL, OF COUNSEL

PATRICK M. GINSBACH

HEATHER M. SUDBECK*

JO CUNNINGHAM
OFFICE MANAGER

*ALSO LICENSED TO PRACTICE IN NEBRASKA

September 21, 2004

RECEIVED

SEP 22 2004

**WATER RIGHTS
PROGRAM**

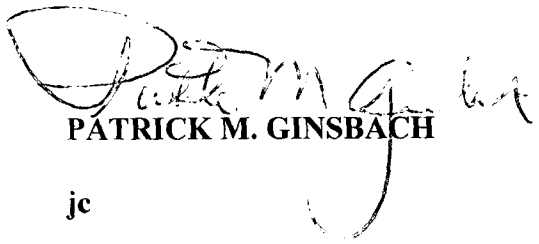
**Water Rights Program
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501**

**RE: Water Rights Application No. 2531-2
Pete Lien & Sons, Inc.**

Enclosed please find a Petition Opposing Application No. 2531-2 and a Written Request for Delay of Hearing on Water Rights Application No. 2531-2.

By way of this letter, I am sending a copy of these documents to Pete Lien & Sons, Inc.

Yours truly,



PATRICK M. GINSBACH

jc

Enclosures

**cc: Pete Lien & Sons, Inc.
Client**

STATE OF SOUTH DAKOTA
SOUTH DAKOTA WATER MANAGEMENT BOARD
WATER RIGHTS DIVISION

RE: Water Rights Application of Pete Lien & Sons

NO. 2531-2

PETITION OPPOSING APPLICATION NO. 2531-2

COMES NOW Lloyd Neugebauer, by and through his lawyers, Farrell, Farrell & Ginsbach, P.C., and files this Petition opposing the Application of Pete Lien & Sons, Inc., #2531-2, to appropriate water from the Cheyenne River.

1. Neugebauer Dairy, Inc., and Petitioner Lloyd Neugebauer currently hold two water rights on the Cheyenne River that would be adversely affected by this Application. The first is Water Right No. 664-2, with a priority date of March 8, 1961, that allows Neugebauer Dairy, Inc., and Petitioner to irrigate 120 acres in Sections 22 and 27, Township 7 South, Range 7, East of the Black Hills Meridian, Fall River County, South Dakota.

2. The second water right permit that Neugebauer Dairy, Inc., and Petitioner hold is Water Right Permit No. 1109-2, with a priority date of April 21, 1972, that allows Neugebauer Dairy, Inc., and Petitioner to appropriate 2.26 cuf per second of water from the Cheyenne River, to irrigate 158.3 acres in Sections 21 and 22, Township 7 South, Range 7, East of the Black Hills Meridian, Fall River County, South Dakota.

3. Petitioner opposes the Application of Pete Lien and Sons because it will unlawfully impair the existing rights that Neugebauer Dairy, Inc., and Petitioner have; that, depending upon the drought conditions, there are years that unappropriated water is

not available to service the existing permits on the Cheyenne River, which would be adversely affected by Application No. 2531-2; that Application No. 2531-2 is not a beneficial use of water in that it appropriates water that is used for domestic purposes and agricultural purposes to be used for a mining operation wherein the Applicant, Pete Lien & Sons, Inc., currently has a spring-fed pond that provides sufficient water to meet the needs for their mining operation, except in those years when drought conditions may exist, then in those years, if they were allowed to appropriate water out of the Cheyenne River, Neugebauer Dairy, Inc., and Petitioner would be adversely impacted; and Petitioner further believes that Application No. 2531-2 is not in the public interest because it takes water necessary for the domestic and agricultural uses to be used for the mining operation, when there are other resources available for the mining operation of the Applicant, Pete Lien & Sons, Inc.

4. The Petitioner's mailing address is:

Lloyd Neugebauer
HC 56, Box 97F
Oral, SD 57766

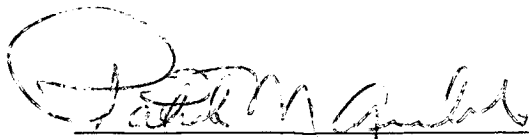
5. The Petitioner's legal counsel is:

Patrick M. Ginsbach
Attorney at Law
441 N. River St.
Hot Springs, SD 57747

Phone: 605.745.5161
Fax: 605.745.3154

WHEREFORE, Petitioner respectfully requests the Water Management Board to deny Application No. 2531-2.

DATED this 21 day of September, 2004.


PATRICK M. GINSBACH
Lawyer for Petitioner Lloyd Neugebauer
441 N. River St.
Hot Springs, SD 57747
605.745.5161

CERTIFICATE OF SERVICE

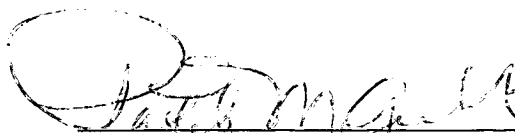
The undersigned hereby certifies that he mailed the original of the foregoing Petition to the individual next designated, all on the date below shown, by depositing the same in the United States mail, first-class postage prepaid in an envelope addressed to:

Water Rights Program
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501

And, the undersigned mailed a true and correct copy of the foregoing Petition to the individual next designated, all on the date below shown, by depositing the same in the United States mail, first-class postage prepaid in an envelope addressed to:

Pete Lien & Sons, Inc.
PO Box 440
Rapid City, SD 57709

on the 21 day of September, 2004.


PATRICK M. GINSBACH

**STATE OF SOUTH DAKOTA
SOUTH DAKOTA WATER MANAGEMENT BOARD
WATER RIGHTS DIVISION**

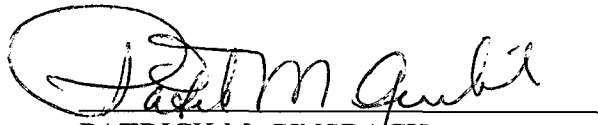
RE: Water Rights Application of Pete Lien & Sons

NO. 2531-2

WRITTEN REQUEST FOR DELAY OF HEARING

COMES NOW Lloyd Neugebauer, by and through his lawyers, Farrell, Farrell & Ginsbach, P.C., having filed a Petition Opposing Application 2531-2 and does hereby request that the hearing on Application 2531-2 be automatically delayed for at least 20 days.

DATED this 21 day of September, 2004.


PATRICK M. GINSBACH
Lawyer for Petitioner Lloyd Neugebauer
441 N. River St.
Hot Springs, SD 57747
605.745.5161

CERTIFICATE OF SERVICE

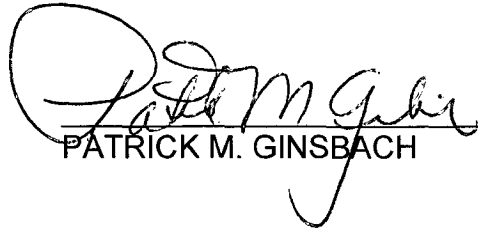
The undersigned hereby certifies that he mailed the original of the foregoing Written Request for Delay of Hearing to the individual next designated, all on the date below shown, by depositing the same in the United States mail, first-class postage prepaid in an envelope addressed to:

Water Rights Program
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501

And, the undersigned mailed a true and correct copy of the foregoing Written Request for Delay of Hearing to the individual next designated, all on the date below shown, by depositing the same in the United States mail, first-class postage prepaid in an envelope addressed to:

Pete Lien & Sons, Inc.
PO Box 440
Rapid City, SD 57709

on the 21 day of September, 2004.



PATRICK M. GINSBACH



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

September 23, 2004

NOTICE

TO: Kyle Frisinger
Pete Lien & Sons Inc.
PO Box 440
Rapid City SD 57709

Patrick M. Ginsbach
Farrell, Farrell & Ginsbach
441 North River Street
Hot Springs SD 57747

Lloyd Neugebauer
HC 565, Box 97F
Oral SD 57766

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Automatic Delay of Hearing on Water Right Permit Application No. 2531-2, Pete Lien & Sons, Inc.

In response to the notice of hearing published in the Hot Springs Star, a petition has been filed by Patrick M. Ginsbach, attorney representing Lloyd Neugebauer, opposing Water Right Permit Application No. 2531-2 filed by Pete Lien & Sons. The petition requests a postponement of the October 6, 2004, hearing before the Water Management Board. Therefore, the hearing on Application No. 2531-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on October 6, 2004.

The hearing to consider Application No. 2531-2 will now be held at 10:30 AM, Thursday, December 2, 2004, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate. Future notice will be provided to all parties of record if there is a change in the meeting time or date.

Please contact Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on September 23, 2004, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 23, 2004, regarding Automatic Delay of Hearing on Water Right Permit Application No. 2531-2, Pete Lien & Sons Inc. addressed as stated below:

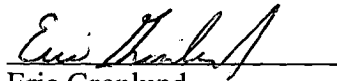
Kyle Frisinger
Pete Lien & Sons Inc.
PO Box 440
Rapid City SD 57709

Patrick M. Ginsbach
Farrell, Farrell & Ginsbach
441 North River Street
Hot Springs SD 57747

Lloyd Neugebauer
HC 565, Box 97F
Oral SD 57766

A copy of the Notice was sent Inter-office to:

Diane Best, Assistant Attorney General, Capitol Building



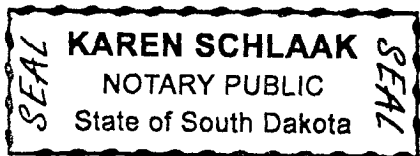
Eric Gronlund
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of September, 2004.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007



FARRELL, FARRELL & GINSBACH, P.C.

LAWYERS

441 NORTH RIVER STREET
HOT SPRINGS, SOUTH DAKOTA 57747
PHONE: 605.745.5161
FAX: 605.745.3154
EMAIL: farrellginsbach@gwtc.net

MARTIN P. FARRELL (1940-1995)

JANE M. FARRELL, OF COUNSEL

PATRICK M. GINSBACH

HEATHER M. SUDBECK*

JO CUNNINGHAM
OFFICE MANAGER

*ALSO LICENSED TO PRACTICE IN NEBRASKA

September 24, 2004

RECEIVED

SEP 27 2004

**WATER RIGHTS
PROGRAM**

**Garland Eberle
Chief Engineer
Water Rights Program
Dept. Environment & Natural Resources
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3182**

RE: Water Permit Application No. 2531-2

Dear Mr. Eberle:

I received the notice dated September 23, 2004, delaying the hearing on Application No. 2531-2. In the address that is typed for Mr. Neugebauer, it lists his address incorrectly. The address should be:

**Lloyd Neugebauer
HC 56, 97F
Oral, SD 57766**

Yours truly,

Patrick M. Ginsbach

PATRICK M. GINSBACH

Jc

**cc: Client
Kyle Frisinger**



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

September 27, 2004

Kyle Frisinger
Pete Lien & Sons, Inc.
PO Box 440
Rapid City SD 57709

Dear Mr. Frisinger:

As per your request, I am enclosing the following list of Cheyenne River water right holders in T7S R7E.

- Computer runs for townships neighboring T7S, R7E
- Computer run for all Upper Cheyenne River water rights
- Sheet showing what the abbreviations stand for

Please note that these computer generated runs also include cancelled water rights.

Please let me know if I may be of further assistance.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
(605) 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

December 7, 2004

NOTICE

TO: Chad Williams
Pete Lien & Sons Inc.
PO Box 440
Rapid City SD 57709

Patrick M. Ginsbach
Farrell, Farrell & Ginsbach
441 North River Street
Hot Springs SD 57747

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Preparation of Findings of Fact, Conclusions of Law and Final Decision

The Water Management Board directed John Guhin, the Board's Attorney, to prepare proposed Findings of Fact, Conclusions of Law and Final Decision for Water Permit Application No. 2531-2 filed by Pete Lien & Sons. The Board will consider adoption of Findings, Conclusions and Final Decision at 1:00 PM, on March 2, 2005, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items.

The Board requested that copies of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and parties by February 10, 2005. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed) by February 21, 2005.

At the Board's discretion, oral arguments by parties who timely filed written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on March 2, 2005. The public hearing was completed on December 2, 2004. No additional testimony will be received on March 2, 2005.

Enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

WATER MANAGEMENT BOARD MEMBERS

Francis E. Brink
1214 South Wells Street
Aberdeen, SD 57401-7351

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Bernita Loucks
219 42nd Street
Rapid City, SD 57702-0240

Marian Gunderson
811 West 3rd
Yankton, SD 57078-3702

Dwayne Rollag
320 Lincoln Lane S
Brookings SD 57006-2741

James Hutmacher
802 East 7th Street
Oacoma SD 57365

BOARD ATTORNEY

John Guhin, Deputy Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

WATER RIGHTS PROGRAM

Department of Environment and
Natural Resources

Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

STAFF ATTORNEY

Diane Best
Assistant Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

CERTIFICATION

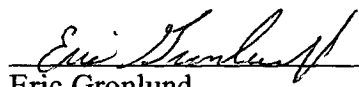
I hereby certify that on December 7, 2004 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated December 7, 2004 regarding Preparation of Findings of Fact, Conclusion and Law and Final Decision addressed as stated below:

Chad Williams
Pete Lien & Sons Inc
PO Box 440
Rapid City SD 57709

Patrick M Ginsbach
Farrell Farrell & Ginsbach
441 North River Street
Hot Springs SD 57747

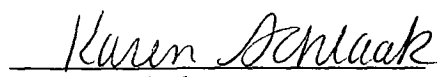
A copy of the above described Notice was sent Inter-office to:

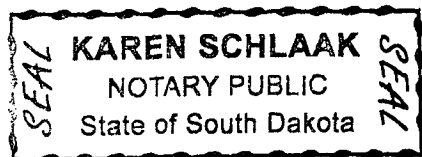
Diane Best, Assistant Attorney General, Capitol Building
John Guhin, Deputy Attorney General, Capitol Building


Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 8th day of December, 2004.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007



STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX (605) 773-4106
www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

RECEIVED
FEB 11 2005
WATER RIGHTS
PROGRAM

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

February 10, 2005

TO: Members of the Water Management Board
and Interested Parties

FROM: John P. Guhin, Assistant Attorney General *John Guhin*

RE: In the Matter of Water Permit Application
No. 2531-2, Pete Lien & Sons, Inc.

Pursuant to the direction of the Board, I am herewith enclosing proposed Findings of Fact, Conclusions of Law and a Final Decision in the above-entitled matter. Please see the Notice of the Chief Engineer dated December 7, 2004, for further information.

JPG/dh
Enclosure

RECEIVED
FEB 11 2005
WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT	)	FINDINGS OF FACT,
APPLICATION No. 2531-2,	)	CONCLUSIONS OF LAW
PETE LIEN & SONS, INC.	)	AND FINAL DECISION

FINDINGS OF FACT

1. This is an application to appropriate 5.0 cubic feet per second (cfs) of water from the Cheyenne River approximately three quarters of a mile northwest of Oral in Fall River County, South Dakota, for a gravel flushing operation.

2. Data from USGS Gaging Stations indicate that there is a sufficient amount of water available to supply this permit. Computation of data gathered at the gaging stations allows reasonable estimates to be made of the likelihood of water being available at a particular location. Gaging station data include computations of the likelihood of a particular amount of water being available at a location with a 10 percent probability to a 90 percent probability. The Board will utilize the 50 percent probability of water being available to provide a reasonable estimate of whether water will be available in this case.

3. The Red Shirt Gaging Station is roughly twenty miles downstream of the proposed point of diversion. The Red Shirt fifty percentile flows for June, July, and August since 1998, have ranged from a low of 78 cfs to a high of 97 cfs. These are, however, likely higher than average because the time measured was of higher than normal precipitation.

4. The Wasta Gaging Station, still farther downstream of the proposed diversion, had a 50 percentile flow in June, July,

and August ranging from 104 to 272 cfs. The period of flow analyzed for this station was 1950 through 2002.

5. There are twenty-two water rights downstream from this project's location to the Wasta Gaging Station. These total 58.74 cfs. The median flows set forth above record the water left in the river after diversions are made. This, however, does not fully explain the situation because water rights have been added during the period in question, water rights users become more or less active, and other events can intervene.

Nonetheless, the amount of water left in the river as shown by the Red Shirt Gage and the Wasta Gage indicate that there is a sufficient amount of water to supply 5 cfs to the Applicant.

6. The Board takes notice that in both 1989 and 1990 shutoff orders for junior water rights were issued for a stretch of the Cheyenne River from the Angostura Dam to Wasta. The 1989 shutoff was for July 12 through July 19, and water rights with a priority of 1965 and later were cut off. The 1990 shutoff was for July 19 through August 6. Again the water rights shutoff was 1965 in priority and later.

7. The Board rejects the thesis that evidence of these two shutoff orders indicates this water permit should not be granted. First, further evidence presented to the Board revealed that the 1990 shutoff order may not have reflected an actual shortage of water but rather reflected inadequacies in the manner in which one of the water rights holder was taking water. Second, uncontradicted evidence demonstrates that the water rights staff has, at its disposal, much more accurate and immediate

information than it had at the time of the 1989 and 1990 shutoff orders and that use of this information should limit the need for future shutoff orders. In particular, the water rights staff now has available to it gaging station information from the Red Shirt, Wasta, and other stations which reflect flows fifteen minutes after the flows have actually occurred. This means that the water rights staff will have much better information and will not be in a position of overreacting to allegations of water shortage. In addition, the water rights staff testified that it has become more sophisticated in handling water shortage problems. The water rights staff attempts to mediate among water rights holders to allow them to stagger their withdraws so that all water rights holders can use the water to which they are permitted or entitled.

8. The Board finds that the gravel washing operation at issue contributes to South Dakota economic development. During the past year, 90,000 tons of sand were produced by the gravel washing operation at Oral. The operation provides material for redimix companies, provides sand for de-icing, and provides materials which are indispensable for the building of roads. The use of water for gravel washing is a beneficial use.

9. The opponents to the permit propose that the permit, if granted, have as a condition that the Applicant not be able to take water when the flows in the river did not meet a specific cfs. The opponents, however, were unable to produce evidence quantifying the appropriate cfs.

10. The Board declines to set a cutoff at a particular cfs. First, as noted, the opponents to the permit are unable to propose and justify such a cfs and that no other party to the litigation is able to do so. Second, the complexity of the Cheyenne River water system makes it impractical at this point to do so. The evidence before the Board indicates that simply selecting a cfs at one gaging station and failing to consider other factors would not provide a high level of certainty that the levels were low enough to justify cutting off any water rights holder. In each situation it will be necessary to look, not only at the cfs at the particular gaging station, but also to look at the flow tributaries which are downstream might be providing and to consider the then-current pattern of water use.

11. The Board has also considered, in particular, the water rights held by opponents to determine whether they are likely to be impacted by the grant of this water permit. The Board determines that they are not likely to be impacted. The opponents have two water permits with the priorities of 1961 and 1972. Because water rights will be shut off by priority, it appears quite unlikely that the opponents' water rights will be shut off in the future. If the occasion arrives when it is necessary to shut off such water rights, it is inconceivable that the water right at issue here will have caused that to occur because the permit at issue here will have a priority date over thirty years later than the most junior of the opponents' water rights.

12. The opponents to the permit also challenged the propriety of allowing the Applicant to withdraw 5 cfs rather than a lower cfs. The Applicant, however, demonstrated that its system was set up to work at an optimum level at 5 cfs. The Board has found that the withdrawal of water at 5 cfs will not harm the opponents. The opponents therefore lack a viable objection to the 5 cfs withdrawal rate.

13. The Board finally takes note of the opponents' objection to the use of 5 cfs on a continuous basis. The Board finds, however, that the application does not request 5 cfs on a continuous basis. Moreover, the final decision of the Board prohibits the use of 5 cfs on a continuous basis and limits the diversions of water under the permit to the amount necessary to replenish the holding/settling ponds for losses due to evaporation and dust control purposes. It also requires recirculation of water through the holding/settling ponds and reuse goes to minimize the Cheyenne River diversions.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.
2. Analysis of the pertinent gaging flow data demonstrates with reasonable probability that there is unappropriated water available for the Applicant's proposed use.
3. The proposed diversion can be developed without unlawful impairment of existing rights when the water is utilized in accordance with the conditions attached to the Final Decision.
4. The proposed use for gravel washing is a beneficial use for the reasons set forth in the Findings.

5. The proposed use is in the public interest when qualified and set forth in the Final Decision.

6. As to the public interest, the Board specifically finds that the product produced by the gravel washing operation is important to the economy of western South Dakota, that the operation of the gravel washing concern is quite unlikely to adversely affect the opponents or the opponents' witness from Box Elder, and that the grant of the permit is in the public interest.

FINAL DECISION

Application No. 2531-2 is approved with the following qualifications:

1. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed. This permit does not authorized diversion of water from the Cheyenne River at any time when the river flow is low, unless written orders have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.

2. Permit No. 2531-2 authorizes diversion of water from the Cheyenne River only to the extent necessary to replenish the holding/settling ponds for losses due to evaporation and dust control purposes. Water shall be re-circulated through the

holding/settling ponds and reused to minimize the need to make
Cheyenne River diversions.

Dated this ____ day of _____, 2005.

BY THE BOARD:

Chairman

p1d.JPG.02.09.05.Permit No. 2531-2 (kak)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of Findings of Fact, Conclusions of Law and Final Decision In the Matter of Water Permit Application No. 2531-2, Pete Lien & Sons, Inc. were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail at Pierre, South Dakota, on this 10th day of February, 2005:

Marian Gunderson
811 West Third St.
Yankton, SD 57078-3702

Francis E. Brink
1214 S. Wells St.
Aberdeen, SD 57401-7351

Bernita Loucks
219 42nd St.
Rapid City, SD 57702-0240

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Dwayne A. Rollag
320 Lincoln Lane South
Brookings, SD 57006-2741

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

James Hutmacher
802 E. Seventh St.
Oacoma, SD 57365

Chad Williams
Pete Lien & Sons Inc.
P.O. Box 440
Rapid City, SD 57709-0440

Patrick M. Ginsbach
Farrell, Farrell & Ginsbach
441 N. River St.
Hot Springs, SD 57747

and sent on the same date by interoffice mail to:

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment
and Natural Resources
Foss Building
Pierre, SD 57501

and by hand delivery on the same date to:

Diane Best
Assistant Attorney General
500 E. Capitol Ave.
Pierre, SD 57501-5070


John P. Guhin
Assistant Attorney General



OFFICE OF ATTORNEY GENERAL

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX (605) 773-4106
www.state.sd.us/atg

RECEIVED

FEB 18 2005

**WATER RIGHTS
PROGRAM**

LARRY LONG
ATTORNEY GENERAL

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: Marian Gunderson, Bernita Loucks, Dwayne A. Rollag,
James Hutmacher, Francis E. Brink, Rodney Freeman, Jr.,
Leo Holzbauer

FROM: Diane Best *DB*
Assistant Attorney General

SUBJECT: DENR Response to Board Counsel's Proposed Findings of
Fact and Conclusions of Law

DATE: February 17, 2005

Enclosed find the DENR Response to Board counsel's Proposed Findings of Fact and Conclusions of Law. Also, I have received a copy of the comments filed by Chad Williams, attorney for the Applicant. The comments, dated February 15, 2005, were sent to the Board, but it appears they were not served on Mr. Ginsbach. Accordingly, I am sending a copy of the comments to Mr. Ginsbach on this date.

DB:dp

Enclosures

cc: Patrick M. Ginsbach
Garland Erbele
John Guhin

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT	)	DENR RESPONSE TO PROPOSED
APPLICATION No. 2531-2,	)	FINDINGS OF FACT,
PETE LIEN & SONS, INC.	)	CONCLUSIONS OF LAW
	)	AND FINAL DECISION

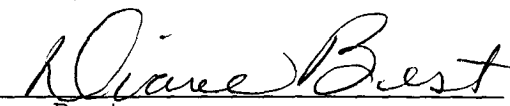
COMES NOW, the Department of Environment and Natural Resources, Water Rights Program, and makes its response to the Proposed Findings of Fact, Conclusions of Law and Final Decision drafted by Board counsel.

1. The DENR urges approval of the Proposed Findings of Fact, Conclusions of Law and Final Decision as drafted, except for the following minor change.
2. Finding of Fact No. 1 refers to the purpose of the operation. The application reflects that the purpose is for a "gravel washing operation."

Dated this 1st day of February, 2005.

Respectfully submitted,

Lawrence E. Long
Attorney General



Diane Best
Assistant Attorney General
500 East Capitol
Pierre, SD 57501-5070
Telephone: (605) 773-3215

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of DENR Response to Findings of Fact, Conclusions of Law and Final Decision In the Matter of Water Permit Application No. 2531-2, Pete Lien & Sons, Inc. were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail at Pierre, South Dakota, on this 14th day of February, 2005:

Marian Gunderson
811 West Third St.
Yankton, SD 57078-3702

Francis E. Brink
1214 S. Wells St.
Aberdeen, SD 57401-7351

Bernita Loucks
219 42nd St.
Rapid City, SD 57702-0240

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Dwayne A. Rollag
320 Lincoln Lane South
Brookings, SD 57006-2741

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

James Hutmacher
802 E. Seventh St.
Oacoma, SD 57365

Chad Williams
Pete Lien & Sons Inc.
P.O. Box 440
Rapid City, SD 57709-0440

Patrick M. Ginsbach
Farrell, Farrell & Ginsbach
441 N. River St.
Hot Springs, SD 57747

By Interoffice Mail To:

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment
and Natural Resources
Foss Building
Pierre, SD 57501

By Hand Delivery To:

John Guhin
Assistant Attorney General
500 E. Capitol Ave.
Pierre, SD 57501-5070


Diane Best
Assistant Attorney General



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

March 17, 2005

NOTICE

TO: Chad Williams
Pete Lien & Sons Inc.
PO Box 440
Rapid City SD 57709

Patrick M. Ginsbach
Farrell, Farrell & Ginsbach
441 North River Street
Hot Springs SD 57747

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and Final Decision

This is to notify you that the Final Decision, including Findings of Fact and Conclusions of Law, were adopted March 2, 2005, by the Water Management Board in the matter of Application for Water Permit No. 2531-2, Pete Lien & Sons, Inc. A copy of the signed Findings of Fact, Conclusions of Law and Final Decision is enclosed.

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days of this notice and be in accordance with procedures established in SDCL 1-26-31.

Enclosure

c: John Guhin, Assistant Attorney General
Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on March 17, 2005, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 17, 2005, adoption of findings of fact, conclusions of law and final decision in the matter of Application for Water Permit No. 2531-2, Pete Lien & Sons, Inc. addressed as stated below.

Chad Williams
Pete Lien & Sons Inc.
PO Box 440
Rapid City SD 57709

Patrick M. Ginsbach
Farrell, Farrell & Ginsbach
441 North River Street
Hot Springs SD 57747

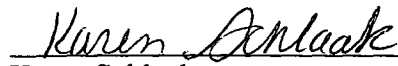
A copy of the Notice was sent Inter-office to:

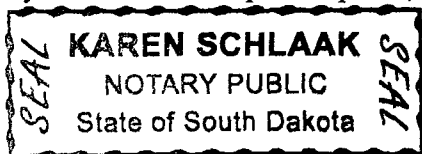
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General


Eric Gronlund
Natural Resource Engineer
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 18th day of March, 2005.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007



STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT	)	FINDINGS OF FACT,
APPLICATION No. 2531-2,	)	CONCLUSIONS OF LAW
PETE LIEN & SONS, INC.	)	AND FINAL DECISION

FINDINGS OF FACT

1. This is an application to appropriate 5.0 cubic feet per second (cfs) of water from the Cheyenne River approximately three quarters of a mile northwest of Oral in Fall River County, South Dakota, for a gravel washing operation.

2. Data from USGS Gaging Stations indicate that there is a sufficient amount of water available to supply this permit. Computation of data gathered at the gaging stations allows reasonable estimates to be made of the likelihood of water being available at a particular location. Gaging station data include computations of the likelihood of a particular amount of water being available at a location with a 10 percent probability to a 90 percent probability. The Board will utilize the 50 percent probability of water being available to provide a reasonable estimate of whether water will be available in this case.

3. The Red Shirt Gaging Station is roughly twenty miles downstream of the proposed point of diversion. The Red Shirt fifty percentile flows for June, July, and August since 1998, have ranged from a low of 78 cfs to a high of 97 cfs. These are, however, likely higher than average because the time measured was of higher than normal precipitation.

4. The Wasta Gaging Station, still farther downstream of the proposed diversion, had a 50 percentile flow in June, July,

and August ranging from 104 to 272 cfs. The period of flow analyzed for this station was 1950 through 2002.

5. There are twenty-two water rights downstream from this project's location to the Wasta Gaging Station. These total 58.74 cfs. The median flows set forth above record the water left in the river after diversions are made. This, however, does not fully explain the situation because water rights have been added during the period in question, water rights users become more or less active, and other events can intervene. Nonetheless, the amount of water left in the river as shown by the Red Shirt Gage and the Wasta Gage indicate that there is a sufficient amount of water to supply 5 cfs to the Applicant.

6. The Board takes notice that in both 1989 and 1990 shutoff orders for junior water rights were issued for a stretch of the Cheyenne River from the Angostura Dam to Wasta. The 1989 shutoff was for July 12 through July 19, and water rights with a priority of 1965 and later were cut off. The 1990 shutoff was for July 19 through August 6. Again the water rights shutoff was 1965 in priority and later.

7. The Board rejects the thesis that evidence of these two shutoff orders indicates this water permit should not be granted. First, further evidence presented to the Board revealed that the 1990 shutoff order may not have reflected an actual shortage of water but rather reflected inadequacies in the manner in which one of the water rights holder was taking water. Second, uncontradicted evidence demonstrates that the water rights staff has, at its disposal, much more accurate and immediate

information than it had at the time of the 1989 and 1990 shutoff orders and that use of this information should limit the need for future shutoff orders. In particular, the water rights staff now has available to it gaging station information from the Red Shirt, Wasta, and other stations which reflect flows fifteen minutes after the flows have actually occurred. This means that the water rights staff will have much better information and will not be in a position of overreacting to allegations of water shortage. In addition, the water rights staff testified that it has become more sophisticated in handling water shortage problems. The water rights staff attempts to mediate among water rights holders to allow them to stagger their withdraws so that all water rights holders can use the water to which they are permitted or entitled.

8. The Board finds that the gravel washing operation at issue contributes to South Dakota economic development. During the past year, 90,000 tons of sand were produced by the gravel washing operation at Oral. The operation provides material for redimix companies, provides sand for de-icing, and provides materials which are indispensable for the building of roads. The use of water for gravel washing is a beneficial use.

9. The opponents to the permit propose that the permit, if granted, have as a condition that the Applicant not be able to take water when the flows in the river did not meet a specific cfs. The opponents, however, were unable to produce evidence quantifying the appropriate cfs.

10. The Board declines to set a cutoff at a particular cfs. First, as noted, the opponents to the permit are unable to propose and justify such a cfs and that no other party to the litigation is able to do so. Second, the complexity of the Cheyenne River water system makes it impractical at this point to do so. The evidence before the Board indicates that simply selecting a cfs at one gaging station and failing to consider other factors would not provide a high level of certainty that the levels were low enough to justify cutting off any water rights holder. In each situation it will be necessary to look, not only at the cfs at the particular gaging station, but also to look at the flow tributaries which are downstream might be providing and to consider the then-current pattern of water use.

11. The Board has also considered, in particular, the water rights held by opponents to determine whether they are likely to be impacted by the grant of this water permit. The Board determines that they are not likely to be impacted. The opponents have two water permits with the priorities of 1961 and 1972. Because water rights will be shut off by priority, it appears quite unlikely that the opponents' water rights will be shut off in the future. If the occasion arrives when it is necessary to shut off such water rights, it is inconceivable that the water right at issue here will have caused that to occur because the permit at issue here will have a priority date over thirty years later than the most junior of the opponents' water rights.

12. The opponents to the permit also challenged the propriety of allowing the Applicant to withdraw 5 cfs rather than a lower cfs. The Applicant, however, demonstrated that its system was set up to work at an optimum level at 5 cfs. The Board has found that the withdrawal of water at 5 cfs will not harm the opponents. The opponents therefore lack a viable objection to the 5 cfs withdrawal rate.

13. The Board finally takes note of the opponents' objection to the use of 5 cfs on a continuous basis. The Board finds, however, that the application does not request 5 cfs on a continuous basis. Moreover, the final decision of the Board prohibits the use of 5 cfs on a continuous basis and limits the diversions of water under the permit to the amount necessary to replenish the holding/settling ponds for losses due to evaporation and dust control purposes. It also requires recirculation of water through the holding/settling ponds and reuse goes to minimize the Cheyenne River diversions.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.
2. Analysis of the pertinent gaging flow data demonstrates with reasonable probability that there is unappropriated water available for the Applicant's proposed use.
3. The proposed diversion can be developed without unlawful impairment of existing rights when the water is utilized in accordance with the conditions attached to the Final Decision.
4. The proposed use for gravel washing is a beneficial use for the reasons set forth in the Findings.

5. The proposed use is in the public interest when qualified and set forth in the Final Decision.

6. As to the public interest, the Board specifically finds that the product produced by the gravel washing operation is important to the economy of western South Dakota, that the operation of the gravel washing concern is quite unlikely to adversely affect the opponents or the opponents' witness from Box Elder, and that the grant of the permit is in the public interest.

FINAL DECISION

Application No. 2531-2 is approved with the following qualifications:

1. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be bypassed. This permit does not authorized diversion of water from the Cheyenne River at any time when the river flow is low, unless written orders have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.

2. Permit No. 2531-2 authorizes diversion of water from the Cheyenne River only to the extent necessary to replenish the holding/settling ponds for losses due to evaporation and dust control purposes. Water shall be re-circulated through the

holding/settling ponds and reused to minimize the need to make
Cheyenne River diversions.

Dated this 15 day of March, 2005.

BY THE BOARD:


Chairman

pId.JPG.02.09.05.Permit No. 2531-2 (kak)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

MAY 02 2005

Pete Lien & Sons Inc
%Chad Williams
PO Box 440
Rapid City SD 57709

Dear Mr. Williams:

Enclosed is Water Permit No. 2531-2 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

An informational sheet *Common Water Right Questions?* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
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523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 30, 2006

NOTICE OF SHUTOFF ORDER

TO: PETE LIEN & SONS INC
KYLE FRISINGER
PO BOX 440
RAPID CITY SD 57709

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

SUBJECT: Cheyenne River Shutoff Order for Junior Priority Date Water Rights

Shutoff Order for Water Right Nos. 1715-2 (2531-2)

To protect the senior priority water rights, the department is issuing shutoff orders to junior water right holders with priority dates after January 1, 1970 from Angostura Dam to Belle Fourche River confluence. Effective immediately, no diversions of water from the Cheyenne River and tributaries will be allowed for those permits with a priority date after January 1, 1970.

Flow in the Cheyenne River has dropped to the point where domestic use of water, which includes livestock watering from the river, has become a concern. This order will be rescinded as soon as conditions improve. If conditions do not improve, this order will remain in effect until the end of the calendar year.

I am asking for your cooperation in complying with this shutoff order. The ongoing drought is creating hardship for all the water right holders along the river. If you have any questions, please contact Mark Rath or Lynn Beck with the Water Rights Program at (605) 773-3352. Thank you.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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www.state.sd.us/denr

September 5, 2006

2531-2 1715-2

PETE LIEN & SONS INC attn KYLE FRISINGER
PO BOX 440
RAPID CITY SD 57709

Dear Sir:

This letter is to inform you that until further notice pumping **will be allowed** to continue under your junior priority water right(s) from the Cheyenne River. Due to recent rains and cooler temperatures, flow in the Cheyenne River has improved and appears to holding steady.

We will continue to monitor the daily stream flows. If flow conditions worsen and domestic use flow is again being impacted, DENR may be forced to again limit pumping.

The USGS maintains a website where you can view real-time stream flow measurements at several sites along the Cheyenne River and it's tributaries at the following web address:

<http://waterdata.usgs.gov/sd/nwis/rt>

If you have any questions, please contact Mark Rath or Lynn Beck with the Water Rights Program at (605) 773-3352. Thank you.

GARLAND ERBELE, Chief Engineer
Water Rights Program

2531-2



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

March 5, 2007

Dear Water Right Holder;

Due to the ongoing drought I am advising Cheyenne River water right holders of the possibility of shutoff orders in 2007 for the river reach from Angostura Dam to the Belle Fourche River confluence. This is **not a shutoff order**.

As a result of the continuing lack of precipitation, tributary flows throughout the Cheyenne River basin remain well below the historical average. Angostura Reservoir ended February almost 21-feet below full and the forecast for improved conditions throughout the summer months is not favorable.

This letter is only intended to give you advanced warning that your ability to divert water may be cut short this year. If shut-off orders are issued, you will receive another letter from the department. In the meantime, water right holders can help by closely monitoring water usage and trying to avoid wasting water.

South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will begin to interfere with domestic use. If levels become critically low, the department must issue shut-off orders to protect domestic water uses. Once these orders are issued, the department will continue to monitor water availability and should conditions improve, the shutoff orders would be rescinded.

If you are interested, the US Geological Survey has an Internet site showing river flows at 150 stream gauging stations across the state. Go to sd.water.usgs.gov and click on "[Realtime streamflow data via satellite](#)".

Thank you for your cooperation. If you have any questions, please contact Mark Rath or Mike DeFea at (605) 773-3352.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

NOTICE OF SHUTOFF ORDER

June 27, 2007

TO: PETE LIEN & SONS INC
KYLE FRISINGER
PO BOX 440
RAPID CITY SD 57709

FROM: GARLAND ERBELE, Chief Engineer
SD DENR Water Rights Program

SUBJECT: Cheyenne River Shutoff Order for Junior Priority Date Water Rights

Shutoff Order for Water Right Nos. (2531-2) 1715-2

To protect the senior priority water rights, the department is issuing shutoff orders to junior water right holders with priority dates between January 1, 1970 and present for the river reach between the Angostura Dam to Belle Fourche River confluence. Effective immediately, diversions of water from the Cheyenne River and tributaries will not be allowed for those permits with a priority date after January 1, 1970.

Flow in the Cheyenne River continues to decline to the point where domestic use of water, which includes livestock watering from the river, has become a concern. This order will be rescinded as soon as conditions improve. If conditions do not improve, this order will remain in effect until the end of the calendar year.

The USGS maintains a website where you can view real-time stream flow measurements at several sites along the river, the web address is:

<http://waterdata.usgs.gov/sd/nwis/rt>

I am asking for your cooperation in complying with this shutoff order. The ongoing drought is creating hardship for all the water right holders along the river.

If you have any questions concerning this order, please contact either Mark Rath at (605) 773-3352 or Aaron Tieman at (605) 394-2229. Thank you.

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 2531-2

I have this day, May3, 2016 made a thorough examination of the water use system constructed by Pete Lien and Sons, PO Box 440, Rapid City, SD 57702 of Permit No. 2531-2, bearing the priority of 6/14/2004 authorizing the diversion of 5.0 cu. ft. per second of the waters of the Cheyenne River for industrial purposes, in Fall River County.

Inspection contact & relationship to permit holder, if applicable: **Clint Beck, Environmental Coordinator**
605-519-1213

A. Works used to divert the water:

Pump:

- 1) Make Gould
- 2) Model 3796
- 3) Size 3" discharge
- 4) Capacity 540 GPM @ 70 PSI

Power:

- 1) Source electric
- 2) Horsepower rating 50 hp

B. Works used to transport water to place of use:

- 1) Type HDPE pipe
- 2) Size 4 inches
- 3) Length 4,400 feet

Comments: xx

C. Works used to apply water to beneficial use:

Water is pumped periodically to a holding pond used for dust control and to replenish settling ponds. Water is then recirculated through the settling ponds for use in the sand and gravel washing operation. Multiple settling ponds are used in various configurations, some of which are part of the reclamation efforts.

D. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by Yes
list any extended period of nonuse: none
- 2) Exceptions to compliance are: none

E. Condition and Location:

1. The system is in good condition with the point of diversion located as follows:
926' N and 593' E of the SW corner Section 23 T7S R7E (43.421969, -103.260685).
2. The works are capable of diverting and conveying to the place of use 1.2 cu. ft. per second of water which is to be used for industrial use. Water has been put to beneficial use to the maximum extent as follows:
sand and gravel washing operation, dust control

The license should be issued for 1.2 cfs .

3. All structures, wells and lands on map Yes

F. Comments or other permit(s) associated with the project: none



Steven Quissell
Water Rights Inspector
DENR, Water Rights Program

Date report completed: May 5, 2016



gould pump



holding pond

John Smith



Approval of Location Change and/or Additional Diversion Point(s)

NAME: Pete Lien and Sons

ADDRESS: PO Box 440, Rapid City, SD 57702

DATE: May 6, 2016 **COUNTY:** Fall River **TELEPHONE:** (605)342-7224

AUTHORITY:

Pursuant to SDCL 46-5-13.1, the location of a diversion point may be changed or additional diversion points may be licensed provided the following conditions are met and the potential for interference with other existing diversions is not increased:

- **Developed water source same as permitted source and no additional water appropriated**

Yes, Cheyenne River. 2531-2 authorizes one diversion point on the Cheyenne River located in the W½ NW¼ Section 26-T007S-R07E. The diversion point was developed in the SW¼ SW¼ Section 23-T007S-R07E.

- **If irrigation, no new land is irrigated**

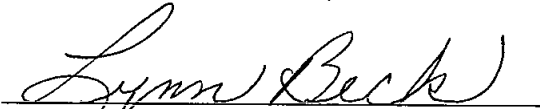
Not applicable, industrial use.

- **Review of Existing Diversions**

The closest WR is 1.4 miles downstream of 2531-2. 1109-2 is held by Neugevauer Dairy Inc. for diversion of 2.26 cfs to irrigate 158.3 acres of land and is senior to 2531-3.

RECOMMENDED ACTION

Based on the above criteria, it is recommended that the diversion point be licensed as developed.



Lynn Beck
Natural Resources Engineer III
Water Rights Program

The Chief Engineer makes a finding pursuant SDCL 46-5-13.1 and ARSD 74:02:01:14.01 that:

This change in location of the diversion point does not increase the potential for adverse effects to existing diversions.



Jeanne Goodman, Chief Engineer
Water Rights Program

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 2531-2

(1) Pete Lien & Sons Inc., PO Box 440, Rapid City SD 57709 made Application No. 2531-2, June 14, 2004 for a water permit to divert 5.0 cubic feet of water per second from the Cheyenne River, Fall River County, South Dakota for industrial use purposes. Permit No. 2531-2, with a priority date of June 14, 2004 was approved March 2, 2005 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before March 2, 2010 and for the application to beneficial use of water on or before March 2, 2014.

An investigation conducted for licensing purposes found the Cheyenne River diversion point authorized under Water Permit No. 2531-2 was not in the location authorized by the permit. Pursuant to SDCL 46-5-13.1, the Chief Engineer makes a finding that the change in location of diversion point does not increase the potential for interference with existing water rights.

(2) The water supply system has been completed and water applied to beneficial use in accordance with South Dakota State Law. Pursuant to South Dakota Codified Law 46-5-30.1, the holder and/or owner of Water Right No. 2531-2 is issued a license, bearing a priority date of June 14, 2004 to appropriate 1.2 cubic feet of water per second from the Cheyenne River for industrial use purposes.

The diversion point is located: 926 feet north and 593 feet east of the SW corner of Section 23-T7S-R7E (SW 1/4 SW 1/4). Water is pumped from the river to holding/settling ponds located in the W 1/2 Section 26-T7S-R7E.

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Permit No. 2531-2 including the following qualifications:

- Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed. This permit does not authorize diversion of water from the Cheyenne River at any time when the river flow is low, unless written orders have been issued by the Chief Engineer. Diversions under this permit shall be in accordance with any written orders issued by the Chief Engineer.
- Permit No. 2531-2 authorizes diversion of water from the Cheyenne River only to the extent necessary to replenish the holding/settling ponds for losses due to evaporation and dust control purposes. Water shall be re-circulated through the holding/settling ponds and reused to minimize the need to make Cheyenne River diversions.



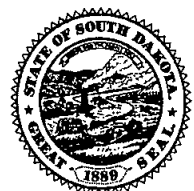
Jeanne Goodman, Chief Engineer

Water Rights Program

Department of Environment and Natural Resources

JUL 01 2016

date





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

2531-2

JUL 01 2016

Pete Lien & Sons Inc
Clint Beck, Environmental Coordinator
PO Box 440
Rapid City SD 57709

Dear Mr. Beck:

Enclosed is Water License No. 2531-2. This is the final water right document completing your process of obtaining a Water Right. Also, included with your license is a map prepared by the staff engineer who conducted the investigation.

As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water. If you have any questions, please contact our office.

Sincerely,

Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures